

REMARKS

The Examiner is thanked for the courtesies extended during the November 25, 2004 telephone interview.

Reconsideration and withdrawal of the objections and rejections of the application are respectfully requested in view of the herein remarks, amendments and submissions.

I. STATUS OF THE CLAIMS AND FORMAL MATTERS

Claims 110-115, 119, 123, 127 and 133-151 are pending. Claims 110-115, 119, 123, and 127 have been cancelled, without prejudice, without admission, without surrender of subject matter, and without any intention of creating any estoppel as to equivalents. Claims 133-151 have been added.

Support for the new claims can be found throughout the specification. For example, support for claims 133-151 can be found at Figure 3, pages 18-21, and pages 24-31 of the present application. Support for claims 142-149 can be found, for example, at page 10, lines 16-21, page 8, lines 29-31, and pages 24-31 of the present application.

No new matter is added.

The Examiner's attention is invited to the document set forth on the accompanying Form PTO-1449, to which Applicants request that the Examiner consider and make of record. This information disclosure is not a representation that the cited document in the Form PTO-1449 is considered most pertinent or that it is indeed prior art.

It is submitted that these claims, as originally presented and as newly presented, are patentably distinct over the prior art cited by the Examiner, and that these claims were in full compliance with the requirements of 35 U.S.C. § 112. The newly added claims and the remarks made herein are not made for the purpose of patentability within the meaning of 35 U.S.C. §§§§ 101, 102, 103 or 112. Rather, the new claims and remarks are made simply for clarification and to round out the scope of protection to which Applicant is entitled. Indeed, the remarks to the claims herewith are not narrowing amendments. Hence, no estoppel should attach or is intended by the herewith amendments.

II. THE OBJECTIONS TO THE DRAWINGS ARE OVERCOME

The Office Action objected to the drawings on the basis that Figure 1 recited "B." without a species name and further, recited "B. oleracea campestris" including two species names. A new Figure 1 has been prepared to correct these typographical mistakes. No

objections to any other drawings were raised. Consequently, reconsideration and withdrawal of the objections to the drawings is respectfully requested.

III. THE REJECTIONS UNDER 35 U.S.C. §112, 1st and 2nd PARAGRAPHS ARE OVERCOME

Claims 110-115, 119, 123 and 127 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite; claims 110-115, 119, 123 and 127 were rejected under 35 U.S.C. § 112, first paragraph, for allegedly lacking written description; and claims 110-115, 119, 123 and 127 were rejected under 35 U.S.C. § 112, first paragraph, as allegedly lacking enablement.

Although Applicants respectfully disagree with these rejections, the canceling of claims 110-115, 119, 123 and 127 and adding of new claims 133-151 without prejudice, without admission, or without surrender of subject matter, as discussed with the Examiner during the November 25, 2004 telephone interview, render the rejections moot.

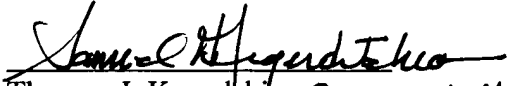
Consequently, reconsideration and withdrawal of the rejection under 35 U.S.C. § 112, first and second paragraphs, is respectfully requested.

Further, Applicants respectfully believe that no further searches are necessary on the new claims because any searches already done would have covered the claimed subject matter.

CONCLUSION

It is verily believed that the application is now in condition for allowance. Reconsideration and withdrawal of the objections and rejections of the application is respectfully requested, and prompt issuance of a Notice of Allowance is earnestly solicited. Once again, the Examiner is thanked for the courtesies extended during the November 25, 2004 telephone interview.

Respectfully submitted,
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